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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,914	03/19/2004	T. Brent Freese	FRE001-088	6779

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DIEDERIKS & WHITELAW, PLC
12471 Dillingham Square, #301
Woodbridge, VA 22192

EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,914

Applicant(s)

FREESE ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/19/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings filed 3/19/2004 are accepted by the examiner.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-3, 9-14, 16, and 18-20 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,644,302 to Bartley ("Bartley").

Bartley discloses in the specification and Figs. 1-9 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1-3, 9-14, 16, and 18-20. In particular, Bartley shows an oven rack that includes a frame portion including front, rear and opposing side rods (see at least Figs. 7A). The front rod includes first and second down-turned segments (see unnumbered vertical portions of brace 32, Fig. 7B) that are joined by a vertically offset portion (see front bar of 36, Fig. 7A). A support platform includes a first plurality of spaced support members (see at least unnumbered bars in Fig. 7A) that form a food item support zone and a second plurality of spaced support members (at least angled portions of 32, Fig. 7B) that are arranged as recited.

In regard to at least claim 2, note food access zone (18) is established vertically below a plane defined by the food item support zone.

In regard to at least claim 3, note that the angled portions of brace (32) are the bend portions recited.

In regard at least to claim 4, in examining this claim, the unnumbered rod shown nearer the center of the rack in Fig. 7A is considered to be properly considered to be a “rear” rod compared with the front rod and

In regard to at least claims 5-6, the unnumbered rod shown in Fig. 7A contacting the end of notch (18) is considered the rear rod, and the offset portions (angled portions of 32) are arranged as recited.

In regard to at least claims 7 and 8, note the relative size of the support platform and the offset portion is shown in Fig. 7A and 7b as recited, i.e. depth is less than one-half and less than one-quarter than the support platform.

In regard to at least claims 9-12, note Fig. 7A and the unnumbered segments of brace (36) extending laterally outwardly and the first and second in-turned/curved segments (30) of the front rod.

In regard to at least claims 13 and 14, note col. 4, lines 24-29 describing the grasping of brace (36).

In regard to claim 16, note at least the unnumbered cross rod shown in Fig. 7A, that is spaced from the unnumbered rear rod.

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In regard to claim 17, the left and right portions of the rack at least shown in Fig. 7A are properly considered to be first and second food item support zones separated by the access zone (18).

In regard to at least claims 18-20, note that the oven rack (for instance that of Fig. 7) is provided in an cooking appliance (19) having an oven cavity as recited (see Fig. 5).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartley as applied to the claims above.

In regard to at least claim 15, through Fig. 7 of Bartley does not appear to two distinct food item access zones, Fig. 4A of Bartley clearly suggests multiple notches/access zones. The examiner considers that it would be obvious to a person of ordinary skill in the art to incorporate the multiple access zones of the type shown in Fig. 7 as taught by the embodiment of Bartley's rack shown in Fig. 4 as two notches are noted to be desirable when the rack is used, for instance, with pizza stones (see col. 3, lines 50-53).

Alternative Claim Rejections

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,012,554 to Hirsch ("Hirsch").

Hirsch discloses in the specification and Figs. 1-3 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1-17. In particular, Hirsch shows an oven rack having a frame portion including front, rear and opposing side rods (11 and 11a) where the front rod includes first and second down-turned segments (16) that are joined by a vertically offset portion (12a) (note particularly Fig. 2). A support platform includes a first plurality of spaced support members (12) that form a food item support zone and a second

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plurality of spaced support members (see the middle portions 12a that do not form the front rod) that are arranged as recited.

In regard to at least claim 2, note the food access zone formed by the interior segments (12a) is established vertically below a plane defined by the food item support zone.

In regard to at least claim 3, note that the angled portions of brace (16) are the bend portions recited (see Fig. 2)

In regard at least to claim 4, note rear rod (12a, i.e. the topmost 12a rod of Fig. 1) and the lower vertical portion formed by the rods (12a) extends from front to back.

In regard to at least claims 5-6, note the offset portions (Fig. 3) and the lower portions (12a) are in a plane vertically below the support member formed by rods (12).

In regard to at least claims 7 and 8, note the relative size of the support platform and the offset portion is shown in Fig. 2 as recited, i.e. depth is less than one-half and less than one-quarter than the support platform.

In regard to at least claims 9-12, note at least the bend portions of bends (16).

In regard to at least claims 13 and 14, the vertically offset portion of Hirsch would be capable of functioning as a handle.

In regard to claim 15, the first and second distinct food item access zones are considered to be formed at the front and back of the grate of Hirsch

In regard to claim 16, note cross bar (21).

In regard to claim 17, the left and right portions (12) are first and second food item support zone portions as recited.

Claim Rejections - 35 USC § 103

9. See statutory basis recited above.

10. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirsch as applied to the claims above in view of U.S. Patent No. 6,112,916 to Barnes et al. ("Barnes").

In regard to claims 18-20, the rack of Hirsch would necessarily be used in a cooking appliance, however, Hirsch does not expressly provide for such a cooking appliance having an oven cavity as recited and supporting the oven rack on the side walls of the oven cavity.

Barnes teaches a cooking appliance with an oven rack in the same field of endeavor as both applicant's invention and Hirsch. In Barnes, the cooking appliance (2) includes an oven cavity (10) having the walls as recited and supporting the oven rack on the walls (see Fig. 1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the oven rack of Hirsch in a cooking appliance as taught by Barnes for the desirable purpose of supporting items to be cooked within the oven cavity of the cooking appliance (see Barnes, col. 1, lines 52-65).

Conclusion

11. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 2,169,904 (Schweller), 3,450,025 (Fleming), 3,977,389 (Ondrasik, II), 5,447,146 (Nickerson), and foreign patent documents GB 827,796 and DE 40 14 823 are cited to further show the state of the art concerning rack and oven rack structure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jcc
April 28, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749